

EXECUTIVE OFFICER SUMMARY REPORT
May 21, 2004

ITEM: 7

SUBJECT: **SDRC POLICIES AND PROCEDURES FOR LAND ACQUISITION AND AWARDING GRANTS.** The Board will discuss / formulate policies and procedures regarding the acquisition of land, the awarding of grants, and other topics related to capital outlay expenditures. The Board will also consider creating a committee to develop written policies and procedures on these issues. Tentative Resolution 04-05 would create a committee(s) to address all of the issues contained in Agenda Items 7 and 8. *(Deborah Jayne)*

PURPOSE: The purpose of this Agenda item is to provide the Governing Board a forum in which to discuss and formulate Agency policies and procedures regarding its land acquisition and conservation powers and duties. The Board will also discuss a broad range of related topics including the status and expenditure of the \$12 million appropriation to the San Diego River signed by former Governor Davis.

The Board will consider adoption of tentative Resolution 04-05 creating a committee(s) to work with the Executive Officer to: (a) develop written policies and procedures on these issues; and (b) make recommendations to the full Governing Board on these issues.

DISCUSSION:

Enabling Statute

The San Diego River Conservancy Act (Act or enabling statute) makes clear that the San Diego River Conservancy (SDRC) was created for the purpose of acquiring, holding, managing, and conserving land in the San Diego River Area. Each of the other essential purposes for which the Conservancy was created (e.g., provide or protect open space, habitat, water quality, wildlife species, wetlands, recreation, education, etc.) is either directly or indirectly linked to the holding of land along the River [sections 32631, 32633].

Much of the text of the enabling statute is devoted to laying out the powers and duties of the Conservancy with respect to the acquisition, management, and conservation of land. Specifically the Act provides that, “for purposes of this division”, the SDRC may:

1. Select, acquire, and hold real property or interests in real property [sections 32633, 32645];
2. Acquire interests in land by various means such as land exchanges, easements, development rights, life estates, leases, and leaseback agreements [section 32645];
3. Manage land or execute agreements to manage land [sections 32633, 32647, 32650, 32651(a), 32653(a)];
4. Improve and develop land [sections 32651(b), 32654]
5. Merge parcels, split parcels, or adjust boundary lines to facilitate acquisition or management; collect fees [32651(c)(d)];
6. For a degraded area, undertake improvements, regulate public access, provide restoration, upgrade or construct facilities [section 32654(a)(b)];
7. Lease, rent, sell, exchange, or otherwise transfer real property or interest in real property [section 32650];
8. Execute agreements with public agencies for real estate services and for the acquisition or disposal of real property [section 32647];
9. Hire private consultants or contractors. Execute memorandums of understanding with public agencies to provide necessary services [section 32643];
10. Receive gifts, donations, or grants of real property or funds from any source [sections 32645(c), 32652];
11. Exercise first right of refusal to acquire lands and enter into options to purchase land for amounts not to exceed \$300,000 [sections 32646, 32648]; and
12. Award grants to public agencies or nonprofit organizations [section 32649].

The Act also:

1. Directs the Conservancy to establish policies and procedures [sections 32653, 32638];
2. Defines the jurisdiction of the SDRC [sections 32644, 32632(f)];
3. Provides that all meetings of the Governing Board are subject to the Bagley-Keene Open Meeting Act [section 32640]; and
4. Authorizes the Board to create advisory boards or committees to facilitate decision-making [section 32642].

\$12 Million Appropriation to San Diego River

In late 2002, former Governor Davis signed the budget bill which appropriated \$12 million in bond funds to the Resources Agency for the protection and restoration of the San Diego River. The remaining \$7.8 million (total available local assistance and capital outlay) must be encumbered by June 30, 2005 and fully expended by June 30, 2007.

A Staff Report detailing the status and accessibility of this appropriation is attached for your review.

Capital Outlay Expenditures

Under Agenda Item 8, the Board will consider creating a committee to establish priorities for the expenditure of capital outlay resources. This effort will likely include the establishment of priority ranking criteria and the subsequent prioritization of programs/objectives (e.g., Land Acquisition Program) and prioritization of identified projects within each program (e.g., acquire specific 40 acre parcel in Mission Valley).

As a starting point for evaluating potential acquisition opportunities, I am currently seeking an "Ownership Inventory" of all parcels along the length of the River. My goal is to present this inventory to the Governing Board at its July 9 meeting. In addition, City of San Diego staff is also tentatively scheduled to present an overview of acquisition opportunities within the City's jurisdiction on July 9. Depending on (1) the Board's (or Committee's) progress on establishing Agency objectives, priority ranking criteria, priorities, and policies and procedures for land acquisition and other capital outlay expenditures; and (2) any exceptional opportunities that may arise, my goal is to present a specific acquisition recommendation to the Governing Board no later than at its September meeting (and in July if possible).

Although the direct sole acquisition of land (in fee simple) appears to be the highest and best use of the remaining \$7.8 million, the SDRC can also participate in the acquisition of land through (1) joint acquisitions (i.e., leveraged partnerships); and (2) awarding of grants¹. Pursuant to the Act, the SDRC may enter into partnerships with, or award grants to, other local, state, or federal agencies, nonprofit organizations, or other non-governmental organizations (NGOs).

Potential Policy and Procedure Issues

In addition to considering policies and procedures regarding the powers and authorities cited above, the Board (or its Committee) may also want to consider policies and procedures on the topics below. Specifically, under what condition(s) might the SDRC:

- a) Fund an acquisition in which the State would hold sole title;
- b) Fund an acquisition in which the State would hold partial title (i.e., joint acquisition);

- c) Fund an acquisition in which the State would hold no title (i.e., award a grant)^{1, 2}
- d) Award a grant for an acquisition with subsequent transfer of title to the State^{1, 3};
- e) Recommend that Resources Agency award a grant directly to a public agency for an acquisition in which the State would hold no title⁴;
- f) Conduct closed sessions to discuss real property negotiations (Pursuant to the Bagely-Keen Act, there are certain circumstances under which the Governing Board is authorized to meet in closed session to discuss real property negotiations)?

The formal establishment of Agency policies and procedures on these and other topics related to capital outlay expenditures will prove helpful to the public and invaluable to me as I formulate capital outlay expenditure recommendations for future consideration by the Governing Board.

As a starting point for the Board (or it's Policy and Procedures Committee), I will provide "Acquisition Policy and Procedure" models from other state-chartered and nonprofit conservancies and from the Southern California Wetlands Recovery Project. I will also provide a copy of the "Property Acquisition Law"; the Governor's May 11, 2004 Executive Order S-10-04 (regarding asset management) and proposed budget trailer bill (that centralizes all land acquisition authority in a newly constituted Public Works Board); and any other applicable laws or policies pertaining to acquisitions by conservancies.

Tentative Resolution 04-05

Tentative Resolution 04-05 extracts the essence from the enabling statute. Findings 6-15 address the Conservancy's many powers and duties with respect to the acquisition, management, and conservation of land. Findings 16, 17, and the final resolution statement, create one or more committees to work with the Executive Officer to develop written policies and procedures on these issues (as well as establishing an Agency mission statement, objectives, programs, and priority ranking criteria for evaluating proposed projects as described in Agenda Item 8).

Issues for Governing Board to Address

I am seeking direction from the Governing Board on the following:

- a) Should a committee(s) be created?

- b) If so, how many committees are needed (should a single committee address all of the issues described in both Agenda Items 7 and 8)?
- c) What is the composition and structure of the committee(s)?
- d) What is the charter of the committee(s) including specific purpose and issues to be addressed (e.g., should the SDRC consider awarding a grant for an acquisition in which it will hold no title¹)?
- e) When should the committee(s) return to the full Governing Board with recommendations?
- f) What modifications are needed to tentative Resolution 04-05?

LEGAL CONCERNS: Ensure that actions of the Governing Board and its committee(s) are consistent with the enabling statute and any other applicable provision of law.

FISCAL IMPACT: None.

SUPPORTING
DOCUMENTS:

- 1. Tentative Resolution 04-05 (**See Agenda Item 8 for Resolution**)
- 2. Staff Report for Item 7 entitled "\$12 Million Appropriation for the San Diego River" dated May 21, 2004

RECOMMENDATION:

- 1. Receive public testimony.
- 2. Specify committee composition, structure, charter, and schedule for returning to the full Governing Board with recommendations.
- 3. Adopt Tentative Resolution 04-05.

1 In the context of the remaining \$7.8 million, it is important to note that the SDRC would actually be "re-granting". Re-granting occurs, for example, when the Resources Agency (to whom the money was appropriated) awards a grant to the SDRC and the SDRC, in turn, awards a grant for the same amount to another entity.

2 A "potential" opportunity currently exists for the SDRC to award a \$195,000 grant to the San Diego River Park Foundation for the acquisition (by the Foundation) of a 110-acre parcel in the Eagle Peak vicinity of the headwaters near Cedar Creek Falls. The land would be purchased, preserved and managed by the Foundation. This opportunity is "potential" because it is currently unknown if the parcel falls within the jurisdiction of the SDRC (i.e., one-half mile on either side of the thread (centerline) of the River). Although parcel lines are not generally accurate in that area, the parcel appears to be approximately 400 feet beyond the SDRC's jurisdictional boundary. A survey is needed to confirm. (See also footnote 1 above.)

3 This is a time-saving strategy that can be considered for acquisitions in which time is truly of the essence (i.e., an acquisition opportunity may be lost if all Department of General Services reviews required for State title are undertaken).

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- 4 This is occasionally done as a time-saving strategy since the Department of General Services review for an acquisition in which the State will hold no title is more streamlined than the review for an acquisition in which the State will hold title.